



December 28, 2000

Mr. Jeffrey J. Horner
Bracewell & Patterson L.L.P.
711 Louisiana Street, Suite 2900
Houston, Texas 77002-2781

OR2000-4875

Dear Mr. Horner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 142596.

The Friendswood Independent School District (the "school district"), which you represent, received a request for a copy of the allegations and any other materials pertaining to a complaint lodged by a student against a teacher/coach. You claim that the requested information is excepted from disclosure under sections 552.114 and 552.026 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.301 of the Government Code dictates the procedure that a governmental body must follow if it wishes to ask the attorney general for a decision determining whether requested information falls within an exception to disclosure. Among other requirements, the governmental body, "no later than the 15th business day after the date of receiving the written request," must submit to the attorney general "a signed statement as to the date on which the written request for information was received by the governmental body or evidence sufficient to establish that date," and "a copy of the specific information requested." Gov't Code § 552.301(e)(1), (C), (D). If the governmental body fails to comply with these requirements, the requested information "is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." Gov't Code § 552.302.

You have submitted neither a signed statement as to when the school district received the request for information nor any evidence to establish that date. Therefore, not only has the school district failed to comply with section 552.301(e)(1)(C), but this particular failure has made this office unable to determine whether the school district timely submitted the requested information in accordance with section 552.301(e)(1)(D). While ordinarily, such non-compliance with section 552.301 could result in the release of requested information

under section 552.302, in this case, the submitted information is confidential under another source of law, and therefore, a compelling reason exists to overcome the presumption of openness. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

The Family Educational Rights and Privacy Act of 1974 (“FERPA”) provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other than directory information) contained in a student’s education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student’s parent. *See* 20 U.S.C. § 1232g(b)(1). “Education records” means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). This office generally applies the same analysis under section 552.114 and FERPA. Open Records Decision No. 539 (1990).

Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. Section 552.026 provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

In Open Records Decision No. 634 (1995), this office concluded that (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a “student record,” insofar as the “student record” is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception.¹ Information must be withheld from required public disclosure under FERPA only to the extent “reasonable and necessary to avoid personally identifying a particular student.” *See* Open Records Decision Nos. 332 (1982), 206 (1978). Additionally, FERPA provides that, “directory information” may be released to the public if the institution or agency complies with section 1232g(a)(5)(B) of title 20 of the United States Code.

¹We are mindful of the fact that the school district was not required to ask for an attorney general decision as to whether the submitted documents contain information that falls under FERPA. However, because you did request an attorney general decision on behalf of the school district under section 552.301, the requirements of that provision were triggered in this case.

Here, we find that the content of the submitted documents as a whole makes the identities of the students named in the documents easily traceable, regardless of whether their names were redacted. See 34 CFR 99.3 (defining “personally identifiable information” to include “information that would make the student’s identity easily traceable”). Consequently, we find that the school district must withhold all of the submitted documents under FERPA.²

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

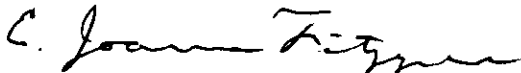
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

²Should the school district have further questions about FERPA’s provisions or its application, it may direct such inquiries to the following agency: Family Policy Compliance Office, U.S. Department of Education, 400 Maryland Ave., S.W., Washington, D.C. 20202-0498.

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "E. Joanna Fitzgerald".

E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF/er

Ref: ID# 142596

Encl: Submitted documents

cc: Mr. James Kennemur
P.O. Box 310
Friendswood, Texas 77549
(w/o enclosures)